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No. 08-295

IN THE

Supreme Court of the United States

THE TRAVELERS INDEMNITY COMPANY,
TRAVELERS CASUALTY AND SURETY COMPANY
and TRAVELERS PROPERTY CASUALTY CORP.,

Petitioners,

—v.—

PEARLIE BAILEY, SHIRLEY MELVIN, GENERAL LEE COLE,
ROBERT ALVIN GRIFFIN, VERNON WARNELL, LEE FLETCHER
ANTHONY, CHUBB INDEMNITY INSURANCE COMPANY,
ASBESTOS PERSONAL INJURY PLAINTIFFS,
and CASCINO ASBESTOS CLAIMANTS,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

In 1986, the U.S. Bankruptcy Court for the Southern District of New York (Lifland, J.) confirmed a landmark plan of reorganization for Johns-Manville Corporation that channeled hundreds of thousands of asbestos-related personal injury claims into a special trust fund for the benefit of injured workers and their families. The linchpin of this reorganization was the contribution of hundreds of millions of dollars by Petitioners and other insurers into a trust for payment of asbestos claims in exchange for protection from future lawsuits against the insurers, all of which was intended to provide Petitioners with full and final protection from suits relating to, arising from or in connection with Petitioners' insurance relationship with Manville. The U.S. Court of Appeals for the Second Circuit affirmed the Manville confirmation order in full on direct review in 1988.

The U.S. Congress subsequently ratified the Manville confirmation order (*see* 11 U.S.C. § 524(h)) and used it as a model for Section 524(g) of the Bankruptcy Code. In the decades following the entry of the final judgment affirming the Manville plan of reorganization, and in reliance on the protections enacted by Congress, *tens of billions of dollars* have been paid into "524(g) trusts" for the benefit of hundreds of thousands of asbestos claimants around the country. In 2002, Petitioners sought to enforce the Manville court's orders when certain asbestos claimants tried to evade the confirmation order by suing Travelers directly in so-called "direct actions." The bankruptcy court that fashioned the Manville plan of reorganization enjoined these suits, holding

that they were proscribed by the 1986 confirmation order. The district court affirmed the bankruptcy court's decision, but in February 2008, more than two decades after the original orders became final, a different panel of the Second Circuit held that the bankruptcy court lacked authority in 1986 to enter a confirmation order that extended beyond the "res" of the debtor's estate, which it defined as insurance policy proceeds.

The question presented, therefore, is:

Whether the court of appeals erred in categorically holding that bankruptcy courts do not have jurisdiction to enter confirmation orders that extend beyond the "res" of a debtor's estate, despite this Court's ruling that "[t]he Framers would have understood that laws 'on the subject of Bankruptcies' included laws providing, in certain limited respects, for more than simple adjudications of rights in the res," *Central Virginia Community College* v. *Katz*, 546 U.S. 356, 370 (2006), and whether the court of appeals compounded this error by:

(a) failing to apply as written a final confirmation order and the federal statute (11 U.S.C. §§ 524(g) & (h)) codifying that order, which has been the cornerstone of nearly all asbestos-related bankruptcies since the statute's enactment;

(b) failing to give effect to the Supremacy Clause and holdings of this Court that federal bankruptcy relief cannot be overridden by rights alleged to have been created under state law; and

(c) failing to enforce on collateral review the same final bankruptcy confirmation order that it previously affirmed in full twenty-one years ago.

PARTIES TO THE PROCEEDINGS BELOW

The Petitioners in No. 08-295 are The Travelers Indemnity Company, Travelers Casualty and Surety Company and Travelers Property Casualty Corp. The Petitioners in No. 08-307 are Common Law Settlement Counsel.

In addition to Petitioners, other appellees below were Statutory Settlement Counsel and Hawaii Settlement Counsel.

The Respondents (appellants below) are Pearlie Bailey, Shirley Melvin, General Lee Cole, Robert Alvin Griffin, Vernon Warnell, Lee Fletcher Anthony, Chubb Indemnity Insurance Company, Asbestos Personal Injury Plaintiffs, and Cascino Asbestos Claimants.

The Debtors in the Chapter 11 proceedings from which this case arises are Johns-Manville Corporation, Manville Corporation, Manville International Corporation, Manville Export Corporation, Johns-Manville International Corporation, Manville Sales Corporation (f/k/a Johns-Manville Sales Corporation, successor by merger to Manville Buildings Materials Corporation, Manville Products Corporation, and Manville Service Corporation), Manville International Canada, Inc., Manville Canada, Inc., Manville Investment Corporation, Manville Properties Corporation, Allan-Deane Corporation, Ken-Caryl Ranch Corporation, Johns-Manville Idaho, Inc., Manville Canada Service, Inc., and Sunbelt Contractors, Inc.

RULE 29.6 DISCLOSURE

The Travelers Indemnity Company is a wholly-owned subsidiary of Travelers Insurance Group Holdings, Inc., which is a wholly-owned subsidiary of Travelers Property Casualty Corp., which is a wholly-owned subsidiary of The Travelers Companies, Inc., a publicly traded company.

No publicly held corporation other than The Travelers Companies, Inc. owns 10% or more of the stock of The Travelers Indemnity Company.

Travelers Casualty and Surety Company is a wholly-owned subsidiary of Travelers Insurance Group Holdings, Inc., which is a wholly-owned subsidiary of Travelers Property Casualty Corp., which is a wholly-owned subsidiary of The Travelers Companies, Inc., a publicly traded company.

No publicly held corporation other than The Travelers Companies, Inc. owns 10% or more of the stock of Travelers Casualty and Surety Company.

Travelers Property Casualty Corp. is a wholly-owned subsidiary of The Travelers Companies, Inc., a publicly traded company.

No publicly held corporation other than The Travelers Companies, Inc. owns 10% or more of the stock of Travelers Property Casualty Corp.

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In The Supreme Court of the United States

THE TRAVELERS INDEMNITY CO., ET AL., PETITIONERS

v.

PEARLIE BAILEY, ET AL., RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The Second Circuit's opinion (App. 1a) is reported at 517 F.3d 52. The district court's opinion (App. 37a) is reported at 340 B.R. 49. The bankruptcy court's order (App. 86a) and findings of fact and conclusions of law (App. 101a) are not officially reported, but are available at 2004 WL 1876046 and 2004 Bankr. Lexis 2519.

The bankruptcy court's original insurance settlement order (App. 210a) and confirmation order (App. 261a) are unreported, but were immediately preceded by an opinion (App. 297a) reported at 68 B.R. 618. The district court's opinion affirming the original insurance settlement order and confirmation order (App. 204a) is reported at 78 B.R. 407. The

Second Circuit's opinion affirming the original insurance settlement order and confirmation order (App. 188a) is reported at 837 F.2d 89.

JURISDICTION

The court of appeals entered its judgment on February 15, 2008 (App. 463a), and denied a timely petition for rehearing and/or rehearing *en banc* on May 8, 2008 (App. 457a). On July 22, 2008, Justice Ginsburg extended the time within which to file a petition for certiorari to and including September 5, 2008, and the petition was filed September 4, 2008. Certiorari was granted on December 12, 2008, and the Court consolidated this case with *Common Law Settlement Counsel* v. *Pearlie Bailey, et al.*, Case No. 08-307. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 8, Clause 4 of the U.S. Constitution provides that "Congress shall have Power . . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States."

Article VI, Clause 2 of the U.S. Constitution provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Section 105(a) of the Bankruptcy Code provides, in pertinent part, that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

Section 524(e) of the Bankruptcy Code provides, in pertinent part, that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."

Section 524(g)(4)(A)(ii) of the Bankruptcy Code provides that in asbestos-related bankruptcies, "[n]otwithstanding the provisions of section 524(e)," a bankruptcy court may bar "any action directed against a third party who . . . is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of . . . the third party's provision of insurance to the debtor or a related party."

Section 524(h)(1) of the Bankruptcy Code provides, in pertinent part, that "if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered . . . to satisfy subsection (g)(4)(A)(ii) . . . ."

The complete text of Section 524 of the Bankruptcy Code is set forth at App. 466a.[1]

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[1] All citations to "App." refer to the appendix accompanying the petition for certiorari in No. 08-295, while citations to "2d Cir. App." refer to the joint appendix used in the Second Circuit.

STATEMENT OF THE CASE

This is an appeal from a 2004 bankruptcy court order enforcing the 1986 confirmation order in the Johns-Manville bankruptcy. The order on appeal is supported by sixty pages of detailed factual findings (App. 101a–159a), entered after a contested evidentiary hearing at which the bankruptcy court heard testimony from numerous witnesses, both on direct and cross-examination, and received hundreds of exhibits into evidence. No party challenged any of these findings of fact in the appellate proceedings below. To the contrary, both the district court and the court of appeals canvassed the record and "embraced the bankruptcy court's factual findings" (App. 32a), finding them "extensive" (App. 14a, 33a), "persuasive" (App. 66a) and "unrebutted" (App. 66a).

The 1986 Manville confirmation order prohibits "any Person" from commencing "any and all claims" "based upon, arising out of or relating to" the insurance policies that Travelers issued Manville. (App. 274a–275a, 439a). The Second Circuit affirmed the confirmation order in full on direct appeal twenty-one years ago. *MacArthur Co.* v. *Johns-Manville Corp.*, 837 F.2d 89 (2d Cir. 1988) (App. 188a–203a). Here, the bankruptcy court made a factual finding (unchallenged, amply supported by the record, and adopted by the Second Circuit) that the asbestos plaintiffs' bar brought certain "direct action" lawsuits against Travelers that were indirect attempts to hold Travelers liable on account of its insurance relationship with Manville, in violation of the 1986 Manville confirmation order.

In 2008, on appeal from the enforcement proceedings, the Second Circuit accepted the bankruptcy court's factual finding that the direct action claims "arise out of" the insurance policies Travelers sold to Manville, and thus fall within the plain language of the 1986 confirmation order. The court of appeals expressed "no doubt that these findings by the bankruptcy court document the ***factual*** origins of Travelers' alleged malfeasance." (App. 32a–33a) (emphasis in original). *See also* App. 33a ("There is little doubt that, in a literal sense, the instant claims against Travelers 'arise out of' its provision of insurance coverage to Manville. The bankruptcy court's extensive factual findings regarding Manville's all-encompassing presence in the asbestos industry and its extensive relationship with Travelers support this notion."). Yet the appellate court found this factual nexus "of little significance from a jurisdictional standpoint," because (according to the Second Circuit), "drawing the duty line is a function of state and not federal law." (App. 32a) (citation omitted).

Thus, while expressly acknowledging that the confirmation order as written and affirmed barred the direct action lawsuits because they were "based upon, arose out of, or related to Manville's liability insurance policies" (App. 9a), the court of appeals nonetheless ruled that the bankruptcy court ***in 1986*** was "without power to enjoin all claims that literally 'arise out of' the insurance policies that Manville purchased from Travelers." (App. 33a n.24).

Essentially approaching the case as though it were a direct appeal of the 1986 confirmation order, the Second Circuit discarded its own decades-old affirmance of the Manville confirmation order and

instead substituted a new test for the scope of bankruptcy jurisdiction. Under the Second Circuit's ruling, bankruptcy courts "lack[] subject matter jurisdiction" to enjoin claims that, "as a matter of state law," purport to relate to "independent" conduct of a non-debtor. (App. 35a–36a).

* * *

The extensive proceedings below took place in four stages: the original entry of the Manville confirmation order in 1986; the Second Circuit's 1988 decision in *MacArthur* affirming the confirmation order on direct appeal; the bankruptcy court's 2004 order enforcing the Manville confirmation order; and the Second Circuit's 2008 ruling that the bankruptcy court "lacked subject matter jurisdiction" to enforce the confirmation order as originally entered and affirmed on direct appeal. Each stage is discussed in turn.

1. The 1986 Confirmation Order

Bankruptcy Judge Burton R. Lifland entered the Manville confirmation order on December 22, 1986, after nearly five years of proceedings in the bankruptcy court. The confirmation order broadly prohibits "any Person" from commencing "any and all claims" "based upon, arising out of or relating to" insurance policies that Travelers issued to Johns-Manville Corporation and its affiliates (collectively, "Manville"). (App. 274a–275a, 439a). In addition, it specifically proscribes all attempts at "collecting, recovering or[] receiving payment of, on or with respect to any Claim, Interest or Other Asbestos Obligation"—whether made "directly or indirectly . . . ." (App. 286a).

The Manville Bankruptcy

The proceedings leading up to the entry of the confirmation order were unprecedented:

> [T]his case is . . . one of the most hard fought in reorganization annals. It has been estimated that there have been some 900 applications or motions, over 1000 orders, approximately 55 adversary proceedings, over 40 appeals (not including writs addressed to the U.S. Supreme Court), 300 odd hearings and thousands of pages of court transcripts. Through it all, this court, this Debtor, and the parties in interest have had to address societal, legal and economic issues on a scale heretofore unknown to Title 11 proceedings. [App. 223a.]

The breadth and complexity of the Manville bankruptcy proceedings stemmed from the company's century-long involvement "with the mining, manufacture and distribution of asbestos" and asbestos-containing products. (App. 105a). Manville's founder obtained a patent for asbestos insulation in 1868, and at its peak, "Manville marketed more than 500 different lines of products manufactured at the company's 33 plants and mines . . . ." (App. 107a). In addition to its own manufacturing, the company supplied up to eighty percent of the raw asbestos fiber used by other manufacturers in certain industries. (App. 109a).

When the adverse health effects of asbestos led to nationwide product liability litigation,

Manville was the primary target. After the Fifth Circuit upheld a strict liability jury verdict based on occupational asbestos exposure in *Borel* v. *Fibreboard Paper Products Corp.*, 493 F.2d 1076 (5th Cir. 1973), "Manville was named as a defendant in virtually every asbestos-related personal injury or wrongful death action filed in the United States." (App. 117a). By the time the company filed for bankruptcy protection in August 1982, tens of thousands of lawsuits were pending or forthcoming, "amounting to a potential liability of more than two billion dollars." (App. 191a).

Manville's Insurance Assets

Travelers was Manville's primary insurer from 1947 through 1976, providing twenty-nine comprehensive general liability policies (one for each year of the relationship) and over 425 other policies, including workers' compensation policies, boiler and machinery policies, employers' liability policies, manufacturer and contractor liability policies, owners and contractors protective liability policies, and landlord/tenant general liability policies. (App. 111a–112a). In addition to the obligations Travelers had to indemnify Manville for its substantial asbestos-related liabilities, the extensive contractual relationship between Travelers and Manville included, *inter alia*, the obligation to defend lawsuits against Manville in courts around the country and to negotiate settlements of asbestos-related claims. (App. 113a–130a).

Early in the reorganization process, the bankruptcy court recognized that Manville's insurance policies were the bankruptcy estate's most

valuable asset and were the key to any successful reorganization. (App. 132a). The value of those policies to the bankruptcy estate was in doubt as a result of costly insurance coverage disputes pending in California between Manville, Travelers and dozens of other asbestos manufacturers and insurers, in addition to myriad other claims on the insurance brought by other parties—including Manville factory workers, vendors of Manville products and even other insurers—who claimed rights to defense, indemnity or contribution under the Manville insurance policies.

As the bankruptcy court recognized, the full value of Manville's insurance rights could be collected and used for the benefit of Manville's creditors (the asbestos claimants) only if Travelers and Manville's other insurers "receiv[ed] assurance that ***any*** liabilities arising from or relating to their insurance relationships with Manville would be fully and finally resolved." (App. 170a–171a) (emphasis added). Indeed, Travelers had already exhausted its product liability limits (App. 120a) and would not enter into a settlement absent an assurance of finality. The bankruptcy court concluded that it was "a necessary condition" for Manville's reorganization "to provide the broadest protection possible . . . for Travelers" in order to settle the disputes and make insurance funds available to asbestos victims. (App. 172a).

The Channeling Injunction

The bankruptcy court devised a solution to maximize the value of the estate for Manville's asbestos creditors. The estate's greatest asset—the

insurance rights—would be marshaled, liquidated and equitably distributed via a channeling injunction. Drawing on its broad equitable power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105(a), and to "enjoin suits that might impede the reorganization process" (App. 200a), the bankruptcy court entered an injunction (incorporated into the confirmation order) with three interrelated provisions:

First, the court channeled all claims to the Manville Trust: "any and all claims or causes of action . . . based upon, arising out of, or related to any or all of the Policies . . . are transferred, and shall attach, solely to the Settlement Fund." (App. 303a).

Second, the Court released Travelers from those claims: "[Travelers] shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims . . . ." (App. 303a). "Policy Claims" are broadly defined as "any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against [Manville] or against [Travelers] based upon, arising out of or relating to the [insurance policies]." (App. 307a).

Finally, the court enjoined all future claims for bad faith or insurer misconduct: "All Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature for Policy Claims against any or all members of the Settling Insurer Group," and

retained jurisdiction to enforce the terms of the confirmation order. (App. 303a).

These three provisions led to one result: In return for making hundreds of millions of dollars available for asbestos victims, "Manville and its insurers were immunized" from future liability. *In re Joint Eastern & Southern Districts Asbestos Litigation*, 237 F. Supp. 2d 297, 301 (E.D.N.Y. & Bankr. S.D.N.Y. 2002) (Weinstein & Lifland, JJ). *See also* (App. 170a) ("This Court did not intend the scope of finality of the [confirmation order] to be less than 100% of everything Manville-related.").

2. The Second Circuit's 1988 Affirmance on Direct Appeal and Congress's 1994 Enactment Codifying the Manville Result

With the exception of the decision on review in this case, the Manville confirmation order has been upheld each time it was challenged and has been so unparalleled a success that Congress used it as a model for the sole federal legislative response to the asbestos litigation crisis—the Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, 108 Stat. 4106 (Oct. 22, 1994).

MacArthur *v.* Johns-Manville

In 1988, the Second Circuit affirmed the Manville confirmation order on direct appeal in two published opinions. The first, *MacArthur Co.* v. *Johns-Manville Corp.*, 837 F.2d 89 (2d Cir. 1988) (App. 188a–203a), addressed and fully approved the channeling injunction. The second, *Kane* v. *Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988), affirmed the remainder of the confirmation order.

In *MacArthur*, the Second Circuit considered and rejected a challenge to the bankruptcy court's subject matter jurisdiction made by MacArthur, a distributor of Manville's asbestos. MacArthur "claim[ed] to be a coinsured under [the settled policies] pursuant to 'vendor endorsements' contained in the policies." (App. 192a). Claiming "independent," state-created rights under the policies, MacArthur asserted "that the Bankruptcy Court lacked jurisdiction and authority to enjoin suits against Manville's insurers." (App. 194a). MacArthur also argued that the Manville confirmation order "constitute[s] a *de facto* discharge in bankruptcy of non-debtor parties not entitled to the protection of Chapter 11." (App. 194a).

The Second Circuit rejected MacArthur's challenge to the bankruptcy court's subject matter jurisdiction:

> We conclude that the Bankruptcy Court had jurisdiction over the insurance policies as property of the debtor's estate. Moreover, the court had authority to issue the injunctive orders pursuant to its power to dispose of a debtor's property free and clear of third-party interests and to channel such interests to the proceeds of the disposition. . . .
>
> The flaw in MacArthur's [*de facto* discharge argument] is that the injunctive orders do not offer the umbrella protection of a discharge in bankruptcy. Rather, they preclude only those suits against the settling insurers that arise out of or relate to Manville's insurance policies. [App. 191a, 194a.]

In affirming the Manville confirmation order on direct appeal, the Second Circuit explained that the protection for settling insurers such as Travelers was a "cornerstone" of the plan and "a critical part of the entire reorganization." (App. 192a).

This Court denied certiorari, *see MacArthur Co.* v. *Johns-Manville Corp.*, 488 U.S. 868 (1988), and the Manville confirmation order has been final ever since. Until now, all attempts to challenge it collaterally have been rejected.

Manville's Successful Reorganization

The broad relief contained in the Manville confirmation order was a necessary predicate to payment by Travelers into the Manville Personal Injury Trust. "Because of the insurance settlements [by Travelers and other insurers], the [Manville] Trust has already distributed ***billions of dollars*** to asbestos victims." (App. 136a) (emphasis added). Moreover, the broad relief contained in the Manville confirmation order enabled the Manville Trust, which initially owned the reorganized company, to sell it in 2001 to Berkshire Hathaway for over $2 billion—providing another vital infusion of funds into the Trust. *See* Daniel Gross, *Recovery Lessons From an Industrial Phoenix*, N.Y. TIMES (Apr. 29, 2001).

Today Manville "has annual sales in excess of $2 billion[,] . . . employs approximately 7,800 people and operates 41 manufacturing facilities in North America, Europe and China." *Johns Manville Recognized as a Climate Action Leader by the California Climate Action Registry*, BUSINESS WIRE

(June 23, 2008). This success was only possible because of the channeling injunction in the Manville confirmation order. The bankruptcy court expressly recognized that the injunction was integral to Manville's reorganization when it entered the confirmation order, concluding that "[i]n the absence of the Injunction, one of the central purposes of title 11, *i.e.* preventing the inequitable, piece-meal dismemberment of the Debtors' estates, cannot be achieved." (App. 269a).

Bankruptcy Reform Act of 1994

Congress codified the Manville confirmation order into law in the Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, 108 Stat. 4106 (Oct. 22, 1994). Section 111 ("Supplemental Injunctions") added subsections (g) and (h) to Section 524 of the Bankruptcy Code. Under Section 524(g), companies facing asbestos-related liability may qualify for channeling injunctions modeled on the Manville confirmation order if they meet the rigorous procedural safeguards that Congress specified. 11 U.S.C. § 524(g) (App. 470a–478a).

Section 524(g) channeling injunctions supplement the general discharge of the debtor provided for in Section 524(a) of the Bankruptcy Code by allowing courts to channel claims directed at non-debtors. Specifically, the statute authorizes bankruptcy courts to "enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand" channeled to a trust. 11 U.S.C. § 524(g)(1)(B) (App. 470a–471a).

The supplemental injunctions that Section 524(g) authorizes bar claims against any insurance company "alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of [the insurer] arises by reason of . . . provision of insurance to the debtor or a related party." 11 U.S.C. § 524(g)(4)(A)(ii) (App. 475a–476a). Once such an injunction is entered, it "shall be valid and enforceable and may not be revoked or modified by any court except through [direct] appeal . . . ." 11 U.S.C. § 524(g)(3)(A)(i) (App. 474a).

As set out in the committee report accompanying the Bankruptcy Reform Act, the supplemental injunction provision was "modeled on the trust-injunction in the Johns-Manville case, which pioneered the approach a decade ago in response to the flood of asbestos lawsuits it was facing." H.R. REP. NO. 103–835, at 40 (1994). Finding the Manville confirmation order to be a "creative solution to help protect the future asbestos claimants," *id*., Congress added subsection (g) to ensure that the "asbestos trust/injunction mechanism . . . is available for use by any asbestos company," *id*. at 41. Subsection (h), in turn, ensures "that Johns-Manville and UNR [another asbestos bankruptcy], both of which have met and surpassed the standards imposed in this section, will be able to take advantage of the certainty it provides without having to reopen their cases." *Id*.

A Senate report accompanying an earlier version of the bill clarified that the new law "is not meant to give the bankruptcy court[s] authority which they do not already possess, and simply

codifies a court's ability to issue supplemental ***permanent*** injunctions which are irrevocable except on appeal." S. REP. NO. 102–279, at 5 (1992) (emphasis added). Here, the supplemental injunction contained in the 1986 confirmation order was entered pursuant to Section 105(a) of the Bankruptcy Code. Following the addition of Sections 524(g) and (h) to the Code, however, the Manville confirmation order has yet another level of statutory protection, in that under subsection (h), the order is "grandfathered" into subsection (g), which renders it "valid and enforceable" and ensures that it "may not be revoked or modified by any court . . . ." 11 U.S.C. § 524(g)(3)(A)(i) (App. 474a).

3. The Bankruptcy Court's 2004 Order Enforcing the Confirmation Order

Years after the bankruptcy court entered the Manville confirmation order, the Second Circuit affirmed the order on direct appeal and Congress codified it, the asbestos plaintiffs' bar began suing Travelers in state courts around the country.[2] These claims are crafted to try to circumvent the bankruptcy court's confirmation order by alleging that Travelers withheld information from the public regarding the dangers of asbestos. The bankruptcy court found that the direct action claims seek to impose liability for "acts or omissions by Travelers

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[2] These lawsuits were referred to below as "direct actions." While the plaintiffs prosecuting these actions assert that they are not "true" direct actions, the label applied is not of consequence. For clarity, Travelers uses the term adopted by all three courts below.

arising from or relating to [its] insurance relationship with Manville." (App. 173a). This finding is unrebutted.

The allegations in the *Wise* complaint filed in a West Virginia state court are typical of the direct action claims. Ten lead plaintiffs from six states purported to bring a nationwide class action against at least fourteen insurance companies (including many vaguely identified affiliates, such as all "insurance entities carrying the name Travelers"). (2d Cir. App. A–435). The suit alleges, *inter alia*, a wide-ranging "conspiracy" between "Johns-Manville and Travelers [to set forth] sworn [interrogatory] answers containing factual errors." (2d Cir. App. A–469 & 489). The *Wise* plaintiffs seek to support their conspiracy allegations by asserting that "Manville and Travelers [worked] closely in their common interest of defending and defeating the growing asbestos litigation and continued their ingenious promotion of the 'no knowledge and no duty to warn' and 'state of the art' defenses." (2d Cir. App. A–505–507). The *Wise* plaintiffs also allege that Travelers and Johns-Manville exchanged information concerning the defense of asbestos claims, and Travelers wrote internal memoranda concerning these exchanges. (2d Cir. App. A–505–507).

The ultimate goal of these direct action suits is to "hold solvent defendants liable for the sins of Manville" even if the targeted defendant "did not make a product to which the plaintiff was exposed" or have anything to do with mining, manufacturing or installing asbestos. W. Mark Lanier, *Conspiracy Theory: Putting New Defendants in Manville's*

Chair, Asbestos L. & Litig., ALI-ABA, Dec. 6–7, 2001 (Am. L. Inst. 2001).[3]

The bankruptcy court concluded that these suits violate both the letter and spirit of the Manville confirmation order, which prohibits "any Person" from commencing "any and all claims" "based upon, arising out of or relating to" the insurance policies that Travelers issued to Manville. (App. 274a–275a, 439a). Judge Lifland made this determination after a full evidentiary hearing at which all parties to this proceeding had the opportunity to present evidence and examine witnesses.

After considering the evidence, Judge Lifland made the fundamental factual finding that any "knowledge" Travelers had acquired "of the hazards of asbestos was derived from its nearly three decade insurance relationship with Manville and the performance by Travelers of its obligations under the Policies, including through the underwriting, loss control activities, defense obligations and generally through its lengthy and confidential insurance

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[3] The "Conspiracy Theory" CLE article was written by a prominent Texas attorney who filed direct actions against Travelers. Writing that "[a]sbestos litigation has proved itself to be an extremely resilient phenomenon," this attorney explained that even after Manville's demise, asbestos litigation "continues to grow, drawing in more and more companies." *Id*. These theories are not new. They were first advanced during and after the Manville bankruptcy by dissatisfied asbestos plaintiffs seeking a larger share of the trust. *See In re Joint Eastern & Southern Districts Asbestos Litigation*, 129 B.R. 710, 818–19 (E.D.N.Y. & Bankr. S.D.N.Y. 1991) (discussing claims based upon "conspiracy in the formation [of] and adherence to industry practices"), *vacated on other grounds*, 982 F.2d 721 (2d Cir. 1992).

relationship under the policies"—a finding that was affirmed by the district court *and* the court of appeals. (App. 128a–129a); *see also* (App. 126a) (stating that to Travelers it was "intuitively obvious [that] issues relating to asbestos and the hazards of asbestos and asbestos litigation ***went hand-in-hand with Manville,*** the largest manufacturer of asbestos, target defendant, and long-time Travelers insured." (emphasis added)).

Judge Lifland therefore concluded that all of the pending direct action suits against Travelers, which alleged that Travelers conspired to conceal the harmful effects of asbestos exposure, sought to hold Travelers liable based on its insurance relationship with Manville, finding as a fact (unchallenged on appeal) "that Travelers learned virtually everything it knew about asbestos" from performance of its contractual duties under the hundreds of insurance policies it issued to Manville over nearly thirty years. (App. 131a).

4. The Second Circuit's 2008 Ruling Sustaining a Collateral Attack

In 2008, following the district court's affirmance of the bankruptcy court's determination that the "direct action" claims were prohibited by the 1986 confirmation order, the Second Circuit accepted Judge Lifland's factual finding that those claims "arise out of" the insurance policies Travelers sold to Manville, and thus fall within the plain language of the 1986 confirmation order. (App. 33a). In fact, the court of appeals had "no doubt that these findings by the bankruptcy court document the ***factual*** origins

of Travelers' alleged malfeasance," but the court opined that these facts are "of little significance from a jurisdictional standpoint," because (according to the Second Circuit) "drawing the duty line is a function of state and not federal law." (App. 32a). The court reasoned that "the 1986 orders must be read to conform with the bankruptcy court's jurisdiction over the res of the Manville estate," so as not to "displac[e]" state courts. (App. 33a) (quotations and internal alterations omitted).

The court of appeals refused to enforce the confirmation order as it was originally written, entered, affirmed and later codified by Congress. Instead, the court ruled that the bankruptcy court ***in 1986*** was "without power to enjoin all claims that literally 'arise out of' the insurance policies that Manville purchased from Travelers." (App. 33a n.24). Essentially approaching the case as though it were a direct appeal of the 1986 confirmation order, the Second Circuit discarded its own earlier affirmance of the Manville confirmation order and instead substituted a new test for the scope of bankruptcy jurisdiction:

> In our view, the district [*sic*] court lacked subject matter jurisdiction to enjoin claims against Travelers that were predicated, as a matter of state law, on Travelers' own alleged misconduct and were unrelated to Manville's insurance policy proceeds and the *res* of the Manville estate. [App. 35a–36a.]

This Court granted a timely petition for certiorari.

SUMMARY OF THE ARGUMENT

The Second Circuit's ruling is wrong for three separate reasons—each of which warrants reversal:

First, the court of appeals failed to apply the plain text of the 1986 Manville confirmation order, holding that the Bankruptcy Clause and federal courts' jurisdiction in bankruptcy are limited to the res of a debtor's estate. (App. 33a). There is no basis for circumscribing bankruptcy jurisdiction in this manner, given this Court's conclusion in *Central Virginia Community College* v. *Katz*, 546 U.S. 356, 370 (2006), that the "Framers would have understood that laws 'on the subject of Bankruptcies' included laws providing, in certain limited respects, for more than simple adjudications of rights in the res."

The lower court's reasoning, if upheld, would have far-reaching implications for a federal statute, 11 U.S.C. § 524(g), which has been the model for nearly every major asbestos-related bankruptcy since its enactment in 1994. Indeed, Congress codified the Manville confirmation order as a model for future cases in Section 524(g), and "grandfathered" the order into 524(g) in the express provisions of Section 524(h). The Second Circuit gave short shrift to Sections 524(g) and (h)—the only federal legislative response to the asbestos litigation crisis to date—when it concluded that bankruptcy jurisdiction must be limited to the res of a debtor's estate.

Second, the court of appeals ruled that the power of federal bankruptcy courts to release and channel claims pursuant to federal law is vulnerable to an end-run purportedly created under the

statutory or common laws of individual states. This holding defies the Supremacy Clause, U.S. CONST. art. VI, cl. 2 (federal law is "the supreme Law of the Land . . . , any Thing in the Constitution or laws of any State to the Contrary notwithstanding"). While a state can create and define the elements of private rights, the holding subordinates the scope and relief authorized by the federal bankruptcy process to rights asserted under state law and allows the laws of the states to "'stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,'" contrary to *Perez* v. *Campbell*, 402 U.S. 637, 649 (1971) (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)).

Third, the court of appeals refused to enforce as written a final bankruptcy court confirmation order as it was entered and affirmed decades ago, after Travelers paid tens of millions of dollars in reliance on that confirmation order and after Congress codified the order as a model for future bankruptcies. The judicial system cannot function without finality.

* * *

In sum, the ruling below undercuts Congress's broad power to "To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States," U.S. CONST. art. I, § 8, cl. 4, as well as the ability of the Judiciary to render final, binding judgments in bankruptcy cases. There is no principled basis in law or logic for the limitations on bankruptcy jurisdiction imposed by the Second Circuit. The judgment below should be reversed and the case should be remanded for further proceedings not inconsistent with this Court's opinion.

ARGUMENT

I. BANKRUPTCY JURISDICTION IS NOT—AND SHOULD NOT BE—LIMITED TO THE "RES" OF THE DEBTOR'S ESTATE

"The framers of the Constitution . . . granted plenary power to Congress over the whole subject of 'bankruptcies,' and did not limit it by the language used." *Hanover National Bank* v. *Moyses*, 186 U.S. 181, 187 (1902) (quoting U.S. CONST. art. I, § 8, cl. 4). The "Framers would have understood that laws 'on the subject of Bankruptcies' included laws providing, in certain limited respects, for more than simple adjudications of rights in the res," including the power to "issue ancillary orders enforcing [bankruptcy courts'] *in rem* adjudications." *Central Virginia Community College* v. *Katz*, 546 U.S. 356, 370 (2006).[4] *See also Local Loan Co.* v. *Hunt*, 292 U.S. 234, 239 (1934) ("That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled. And this [is] irrespective of whether

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[4] No Justice sitting in *Katz* disagreed with this core principle. *See id*. at 391 (Thomas, J. dissenting) ("The fact that certain aspects of the bankruptcy power may be characterized as *in rem*, however, . . . does not answer the question presented in this case: whether the Bankruptcy Clause subjects the States to . . . proceedings the majority describes as "ancillary to and in furtherance of the court's *in rem* jurisdiction," though not necessarily themselves *in rem* . . . .").

the court would have jurisdiction if the proceeding were an original one.") (internal citations omitted).

Bankruptcy laws are broad because bankruptcy courts must resolve a range of multiple, often interrelated disputes across a wide range of topics with layers of interested parties, all in a single proceeding. The Nation's bankruptcy courts are—and must remain—forums in which financially distressed entities can secure relief in a manner that reduces the costs of default, maximizes returns to all stakeholders, and rehabilitates viable debtors. The complex disputes brought to the bankruptcy courts require the "flexibility and equity built into Chapter 11 of the Bankruptcy Code," *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513, 525 (1984), if the objectives of the bankruptcy system are to be fulfilled.

The Second Circuit's res-based jurisdictional limitation is unsupportable in law and untenable in practice. *In rem* jurisdiction is the foundation for much of bankruptcy practice and is often the short-hand for describing typical bankruptcy disputes, but it is not—and has never been—an outer boundary beyond which courts cannot pass. A sharp constraint on jurisdiction will destroy much of that flexibility. *See* ELIZABETH WARREN, CHAPTER 11: REORGANIZING AMERICAN BUSINESSES 171 (Aspen 2008) ("To reach the goals of enhancing the value of the estate and efficiently distributing that value to the creditors of the estate, the bankruptcy laws need to be grounded in the broadest possible jurisdictional reach."). *Cf. Hecht Co.* v. *Bowles*, 321 U.S. 321, 329–30 (1944) ("The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case.

Flexibility rather than rigidity has distinguished it.").

A. Nothing in the Constitution or Laws of the United States Limits Bankruptcy Jurisdiction to the "Res" of a Debtor's Estate

Neither the constitutional grant of bankruptcy power to Congress nor the statutory grant of bankruptcy jurisdiction to the Judiciary contains the limitations the Second Circuit imposed.

Congress's power to legislate "on the subject of Bankruptcies," U.S. CONST. art. I, § 8, cl. 4, is plenary. As this Court has held, when an act of Congress is claimed to fall outside the scope of the Bankruptcy Clause, "the simple question is: 'Does [the challenged act] constitute a law on the subject of bankruptcies?'" *Continental Illinois National Bank & Trust* v. *Chicago, Rock Island & Pacific Railway*, 294 U.S. 648, 667 (1935). *See also Hanover National Bank*, 186 U.S. at 192 ("Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law . . . .").

The Framers viewed as self-evident the necessity of a national bankruptcy power. James Madison wrote that "[t]he power of establishing uniform laws of bankruptcy, is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties live, or their property may lie, or be removed into different States, that the expediency of it seems not likely to be drawn into question." THE FEDERALIST NO. 42, at

238 (James Madison) (E.H. Scott ed., 1898). *See also* 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1100 (1833) ("The brevity, with which the subject is treated by the Federalist, is quite remarkable."). This brevity was likely occasioned by the fact that "the necessity for a single national law governing such collective proceedings seemed self-evident." Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, 98 MICH. L. REV. 2276, 2286 (2000).

Pursuant to its broad Article I, Section 8 constitutional power, Congress has granted the federal courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).[5] This Court also has specifically cited the Manville confirmation order as a proper exercise of a bankruptcy court's jurisdiction. *See Celotex Corp.* v. *Edward*s, 514 U.S. 300, 310–11 (1995) (citing the 1988 affirmance of the injunction in the Manville confirmation order as being in accord with the Court's holding). From the first bankruptcy law, Congress recognized that only a broad grant of jurisdiction would suffice. *See* 9 ANNALS OF CONG. 624 (1799) ("The necessity of a bankrupt law results wherever a nation is in any considerable degree commercial. No commercial people can be well governed without it. Wherever there is an extensive commerce, extensive credits must be necessarily given.") (Rep. Bayard).

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[5] The Judicial Code lists "confirmations of plans" as core proceedings "arising under" or "arising in" a bankruptcy case. 28 U.S.C. § 157(b)(2)(L).

Earlier bankruptcy jurisdictional grants were broad and unquestionably reached "beyond the res" of the debtor's estate. Justice Stevens' opinion for the Court in *Katz* noted that the first bankruptcy statute Congress enacted "gave bankruptcy commissioners appointed by the district court the power, *inter alia*, to imprison recalcitrant third parties in possession of the estate's assets." *Central Virginia Community College* v. *Katz*, 546 U.S. 356, 370 (2006) (citing Bankruptcy Act of 1800, 6 Cong. Ch. 19, § 14, 2 Stat. 19 (Apr. 4, 1800)).

The 1800 Act also provided that bankrupt debtors arrested by authorities contrary to the act are to be released upon giving the arresting officer the summons from the bankruptcy commissioners (2 Stat. 32, §22), and authorized federal writs of habeas corpus to free individuals arrested by a state on a discharged debt (2 Stat. 32, § 38).[6] Protection of the debtor—not just the res—was a critical element of the nation's first bankruptcy law.

Nothing in the subsequent bankruptcy laws passed by Congress (the Bankruptcy Acts of 1841, 1867 and 1898) restricts bankruptcy jurisdiction to a particular res. Decisions applying those laws beyond a debtor's particular property include, for example, *Sampsell* v. *Imperial Paper & Color Corp.*, 313 U.S.

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[6] "This grant of habeas power is remarkable not least because it would be another 67 years, after ratification of the Fourteenth Amendment, before the writ would be made generally available to state prisoners." *Katz*, 546 U.S. at 374. The inclusion of the habeas remedy in the 1800 Act was one of only a few additions made to what was otherwise a nearly exact replica of British bankruptcy statutes. *Id*. at 373–74.

215 (1941) (holding that, even in the absence of express statutory authority, the 1898 Act permitted consolidation of property of a non-debtor with a debtor's estate); *Petition of Portland Electric Power Co.*, 97 F. Supp. 877 (D. Or. 1943) (enjoining a state public utilities commissioner from taking action against a public utility company that was a non-debtor subsidiary of the debtor); *In re Skorcz*, 67 F.2d 187, 190 (7th Cir. 1933) (concluding that although debtor's post-bankruptcy wages "constituted no part of the bankrupt's estate at the time of the adjudication," the bankruptcy court nonetheless had "plenary power to [protect post-bankruptcy wages] by injunction"). *See also* Chandler Act, Pub. L. No. 75-696, 52 Stat. 840 (June 22, 1938) § 67(a)(5) (amending 1898 Act to permit discharge of a non-debtor's state law-recognized independent claims against a non-debtor surety); 11 U.S.C. § 547(d) (same, in present Bankruptcy Code).

There is no warrant in the constitution or laws of the United States to restrict the "broad authority" vested in the Nation's bankruptcy courts, *United States* v. *Energy Resources Co.*, 495 U.S. 545, 549 (1990), by artificially limiting it to a particular "res."

B. Bankruptcy Courts Cannot Function Properly Without Jurisdiction to Enter Ancillary Orders Effectuating Their *in Rem* Adjudications

The broad jurisdiction and authority of bankruptcy courts is critical for the fair and equitable resolution of commercial matters, and is most evident in the mass tort context, including

asbestos, other products liability contexts, and even large financial losses. By hewing to the Constitutional grant of authority to Congress to establish a uniform law of bankruptcies for more than two centuries, this Court has preserved the ability of Congress to write bankruptcy laws that respond to a wide variety of economic challenges.

Three bankruptcy court-supervised resolutions of sprawling controversies illustrate the importance of bankruptcy court authority beyond the confines of a res, and the damaging implications of the Second Circuit's ruling:

Drexel Burnham Lambert: In settlement of SEC charges, Drexel Burnham Lambert Group agreed to create a $350 million fund to compensate investors. *In re Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910, 913 (Bankr. S.D.N.Y. 1991). Drexel contributed $200 million, but filed for bankruptcy before the remainder came due.

In the bankruptcy proceedings, Drexel reached a comprehensive settlement with the SEC and approximately 15,000 other claimants in which Drexel agreed to contribute the remaining $150 million to the SEC fund which, together with Drexel's remaining assets, would be divided among the various claimants. A key feature of the settlement was a permanent injunction barring future lawsuits against Drexel's former directors and officers. *Id.* at 928.

Affirming the non-debtor injunction as an appropriate exercise of bankruptcy court discretion, the Second Circuit stated that protecting the directors and officers "enable[d] the directors and

officers to settle these suits without fear that future suits will be filed." "Without the injunction," the court recognized, the directors and officers would be less likely to settle, obstructing a resolution that would maximize funds available to those whom the debtor had injured. *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992).

A.H. Robins: Robins, a large pharmaceutical company, faced billions of dollars in liability arising out of its sale of the Dalkon Shield. Robins sought bankruptcy protection, and ultimately negotiated a reorganization plan which entailed a merger with another company. Robins's merger partner agreed to contribute substantial funds toward resolution of the tort claims but only if it and certain third parties received protection against future liability through entry of a permanent channeling injunction.

Certain claimants challenged the company's reorganization plan, arguing that the bankruptcy court lacked authority to enjoin their independent claims, including state-law claims against non-debtor third parties (Robins's directors, attorneys, primary casualty insurer and the insurer's attorneys, and even physicians who had prescribed the Dalkon Shield). Giving particular weight to the "impact of the proposed suits on the bankruptcy reorganization," and the fact that the barred claimants had elected to opt out of a well-funded trust and instead seek to pursue their claims in the tort system, the Fourth Circuit affirmed the power of the bankruptcy court to bar a variety of claims against third parties whose participation in a bankruptcy settlement was crucial. *In re A.H. Robins Co., Inc.*, 880 F.2d 694, 701 (4th Cir. 1989).

Dow Corning: Dow Corning manufactured half of the silicone gel breast implants used in the United States for nearly thirty years, and supplied silicone materials to other manufacturers. When studies revealed possible adverse health consequences associated with the implants, the FDA ordered the products removed from the market. Tens of thousands of personal injury lawsuits were filed against Dow and its two shareholders, Dow Chemical Company and Corning, Incorporated.

In its reorganization, Dow established a $2.35 billion fund to pay personal injury claims, government health care providers and other creditors. Dow's products liability insurers, shareholders and operating cash reserves contributed to the fund. Critically, in exchange for these contributions, the bankruptcy court approved the release of Dow's insurers and shareholders from all further liability, and enjoined anyone from bringing actions against these entities. All potential claims were channeled to the trust established in the reorganization plan.

The Sixth Circuit held that the releases and injunctions were legitimate exercises of bankruptcy court power, so long as they were supported by an appropriate factual predicate. *See In re Dow Corning Corp.*, 280 F.3d 648, 656 (6th Cir. 2002) (noting bankruptcy courts' broad authority as courts of equity) (citing *United States* v. *Energy Resources Co.*, 495 U.S. 545, 549 (1990)). Enumerating seven factors necessary to justify an injunction against non-consenting creditors, the court remanded for further factual findings. On remand, the district court (having withdrawn the reference from the

bankruptcy court) found that the non-debtor releases and injunctions met the Sixth Circuit's test and approved the plan and injunctions in full. *In re Dow Corning Corp.*, 287 B.R. 396, 416 (E.D. Mich. 2002), *appeal dismissed*, Case No. 03-1036 (6th Cir. 2003).[7]

None of the comprehensive reorganizations in these multi-faceted cases could have occurred under the Second Circuit's unprecedented theory of bankruptcy court jurisdiction, in which the reach of bankruptcy court jurisdiction is strictly circumscribed by what the court of appeals defines as the res of the debtor's estate, such that the federal confirmation orders are easily circumvented by artful pleading. While these cases arose in contexts as diverse as financial services, manufacturing and other industries, the issue is particularly acute in the

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[7] *See also In re Airadigm Communications, Inc.*, 519 F.3d 640 (7th Cir. 2008) (allowing, in certain circumstances, "a bankruptcy court [to] release a non-debtor from creditor liability over the objections of the creditor"); *In re Continental Airlines*, 203 F.3d 203, 211 & n.6 (3d. Cir. 2000) (stating that the Bankruptcy Code "explicitly authorize[s] the release and permanent injunction of claims against non-debtors" under 11 U.S.C. § 524(g), which "establish[es] procedure for resolving asbestos claims"); *In re Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (bankruptcy court properly enjoined third-party claims against non-debtor in connection with settlement of adversary proceeding); *In re G.S.F. Corp.*, 938 F.2d 1467 (1st Cir. 1991) (bankruptcy court properly enjoined state-court environmental lawsuit between debtor's landlord and a secured creditor of debtor's bankruptcy estate, notwithstanding that claim was not "derivative" of debtor's liability, and where the sole effect on the debtor's estate was a possible indemnity claim against debtor's estate), *overruled on other grounds by Connecticut National Bank* v. *Germain*, 503 U.S. 249 (1992).

context of bankruptcies involving mass torts, and especially asbestos litigation.

The strain on the judicial system and resources of parties occasioned by asbestos litigation dwarfs that of all other mass torts. The Johns-Manville case alone resolved *hundreds of thousands of potential lawsuits and has provided billions of dollars* in funds for the benefit of asbestos claimants. To limit the scope of that settlement after twenty years of payouts not only reverses two decades of settled reliance but also destroys confidence in negotiated settlements in other mass tort cases in the future.

Here, the Second Circuit's analysis allows artful pleading to defeat the plain language and intent of the Manville confirmation order—which unequivocally bars "any Person" from commencing "any and all claims" "based upon, arising out of or relating to" insurance policies Travelers issued to Manville. (App. 274a–275a, 439a). The dispositive fact is that the direct action claims against Travelers arise out of the performance of its duties to defend Manville and to handle Manville claims. This is precisely why the injunction was not limited to enjoining claims against the "proceeds" of the policies. Congress's enactment of Sections 524(g) and (h) is a legislative determination that the nexus Judge Lifland identified here is sufficient, and the court of appeals was without authority to override that judgment by imposing new limitations on the scope of the Manville confirmation order.

C. The Second Circuit's Attempt to Limit the Reach of the Manville Confirmation Order to a Specified Set of "Policy Limits" Ignores the Bankruptcy Court's Extensive Factual Findings Demonstrating the Nexus Between the Direct Action Claims and the Contractual Obligations Travelers had to Manville

The Second Circuit defined the insurance portion of the res of Manville's estate to mean the particular dollar limits of over 425 separate insurance policies Travelers issued to Manville in the course of their twenty-nine-year relationship (which the court of appeals termed "Manville's insurance policy proceeds") (App. 6a). The Second Circuit attempted to draw a distinction between this res, on the one hand, and every other incident and component of the broad and deep contractual ties between Travelers and Manville pursuant to which, for example, Travelers (pursuant to its duty to defend) defended and settled lawsuits filed against Manville in courts around the country. In the Second Circuit's view, then, the contractual obligation to indemnify up to a particular policy limit was part of the res of the bankruptcy estate, while every other incident of and duty inherent in the contractual insurance relationship is not.

As a threshold matter, the Travelers products liability limits were exhausted by the time the Manville plan of reorganization was confirmed and the confirmation order became a final order. (App. 134a, 199a). If the channeling injunction incorporated in the 1986 confirmation order were meant to apply only to "policy limits," there would

have been no point in including such a provision, as there were no products liability limits remaining. This fact alone demonstrates the error in the Second Circuit's analysis.

In any event, the distinction drawn by the Second Circuit (between "policy proceeds" on the one hand, and every other obligation imposed on Travelers under the policies) is not consistent with the actual obligations of the parties' contractual relations, let alone workable or even understandable enough to delineate a jurisdictional boundary. The bankruptcy court's unchallenged factual findings detail how "[e]very dollar paid by Travelers on account of Manville . . . correlated to a specific provision in the policies that Travelers issued to Manville." (App. 130a). As just one example, the bankruptcy court discussed the contractual obligation Travelers had to defend Manville in personal injury litigation—the performance of which is a central focus of the direct action lawsuits. The bankruptcy court noted that the *Sorrels* complaint, for example, attempted to hold Travelers liable for Manville's alleged misrepresentations:

> Manville, acting as agent for Travelers, misrepresented information concerning, among other things, animal studies concerning the relationship between asbestos exposure and cancer. [App. 145a (internal citation omitted).][8]

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[8] Other direct action complaints asserted that Travelers facilitated the presentation of fraudulent "state of the art" defenses while understanding, *via* Manville, that asbestos was hazardous; that Travelers wrote memoranda about the

During the Manville bankruptcy, the bankruptcy court never limited its assessment of Manville's interest in the Travelers policies to the "proceeds" of those policies. Indeed, the court noted that, in addition to a duty to indemnify, the policies imposed a duty to defend. *See In re Johns-Manville Corp.*, 33 B.R. 254, 267–68 (Bankr. S.D.N.Y. 1983) (recognizing that even aside from the "pool of insurance proceeds" that is "finite" and has "clearly defined parameters," the policies Travelers sold to Manville "obviously have value to the Manville estate" insofar as "the insurers may be called upon to defend" Manville in tort actions in addition to its obligations to indemnify Manville). Other duties inherent in the contractual relationship—including duties of confidentiality and good faith—are similarly valuable and were clearly encompassed within the scope of the Manville confirmation orders. It is apparent, therefore, that limiting the scope of the bankruptcy court jurisdiction to the "res" of "insurance policy proceeds" is illogical and unworkable.

But in any event, the search for a particular, discrete "res" upon which to tether bankruptcy court jurisdiction misses the mark. Again, "[t]he Framers would have understood that laws 'on the subject of Bankruptcies' included laws providing . . . for more

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potential litigation crises that would arise from asbestos, again based on its insurance relationship with Manville; and that Manville and Travelers gave "sworn answers containing factual errors" in response to interrogatories in pre-bankruptcy asbestos personal injury litigation. (App. 143a–144a). All of these allegations plainly "arise out of" Travelers providing insurance to Manville.

than simple adjudications of rights in the res." *Katz*, 546 U.S. at 370. Thus, "while the principal focus of the bankruptcy proceedings is and was always the res, some exercises of bankruptcy courts' powers—issuance of writs of habeas corpus included—unquestionably involved more than mere adjudication of rights in a res." *Id*. at 378. *See also United States* v. *Energy Resources Co.*, 495 U.S. 545 (1990) (affirming the bankruptcy court's power to restructure debtor/creditor relationships in a plan of reorganization not limited to assets in which the debtor has a property interest).

The Second Circuit's concern that the breadth of the Manville confirmation order could "lend[] itself to abuse" (App. 30a) or "displace[] state courts" (App. 33a) is misplaced. The bankruptcy court's enforcement order affirmatively states that "nothing in this Order shall enjoin . . . claims arising from contractual obligations by Travelers to policyholders other than Manville" (App. 96a), so long as such claims are not grounded in the contractual relationship between Travelers and Manville. In affirming the bankruptcy court's enforcement order, the district court noted that nothing in it would bar "a suit alleging tortious conduct by Travelers on behalf of a non-Manville insured, conduct that is unrelated to Manville and not based on any knowledge of asbestos hazard[s] gained from Manville, and that did not involve Manville asbestos or asbestos products." (App. 67a).[9]

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[9] Abuse in the bankruptcy field, like abuse in other legal areas, can come from many directions. The Bankruptcy Code gives federal courts—including reviewing courts—a number of tools to challenge any alleged overreaching. A proposed plan of

Over seventy years ago, this Court surveyed the history of federal bankruptcy legislation and concluded that the laws and judicial decisions on the topic "demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day." *Continental Illinois National Bank & Trust* v. *Chicago, Rock Island & Pacific Railway*, 294 U.S. 648, 671 (1935). "And these acts, far-reaching though they be, have not gone beyond the limit of congressional power; but rather have constituted

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reorganization must meet at least sixteen statutory conditions to be confirmed. *See* 11 U.S.C. § 1129(a)–(b). Federal courts have limited the scope of a bankruptcy order in a number of fact-specific circumstances. For example, a proposed plan may not legitimatize a transfer in fraud of creditors (11 U.S.C. § 548), may not modify the standards for allowance of claims in bankruptcy (11 U.S.C. § 502(b)), may not alter the terms of a contract to be assumed under the plan (*NLRB* v. *Bildisco & Bildisco*, 465 U.S. at 531–32 (debtor "assumes the contract *cum onere*")), and may not obtain injunctive relief for non-debtor foreign affiliates for the purposes of facilitating a sale by the common parent of the debtor (*In re Combustion Engineering, Inc.*, 391 F.3d 190, 224–33 (3d Cir. 2004)). To the extent it is implicated in a proposed plan, the standards for complying with Section 105 are highly dependent upon all the relevant facts and circumstances in the context of the proposed plan. The Supreme Court long ago recognized that the bankruptcy power cannot be completely demarcated by a single rule or set of rules: "The capacity of the bankruptcy clause to meet new conditions as they have been disclosed [has] not gone beyond the limit of congressional power; but [rather] have constituted extensions into a field whose boundaries may not yet be fully revealed." *Continental Illinois*, 294 U.S. at 671.

extensions into a field whose boundaries may not yet be fully revealed." *Id*.

The Second Circuit's narrow construction of bankruptcy jurisdiction does not accord with well-settled constitutional and statutory law as construed by this Court for over a century. The result is both unprecedented and unwarranted, and should be reversed.

II. THE SUPREMACY CLAUSE REQUIRES THAT THE TERMS OF A BANKRUPTCY CONFIRMATION ORDER ARE BINDING ON ALL PRIVATE RIGHTS RESOLVED BY THAT FEDERAL ORDER, HOWEVER THEY ARE CREATED

In addition to incorrectly limiting bankruptcy jurisdiction to the "res" of a debtor's estate, the court of appeals compounded that error by holding that a final ***federal*** order can be circumvented because state law—not the federal court—determines the scope of the federal order. Having concluded that Judge Lifland's detailed analysis of the actual facts and the scope of his own order was "of little significance from a jurisdictional standpoint," (App. 70a) the Second Circuit proceeded to redefine the scope of the already-affirmed Manville confirmation order by "look[ing] to the laws of the states where the claims arose to determine if indeed Travelers did have an independent legal duty in its dealing with plaintiffs, notwithstanding the factual background in which the duty arose." (App. 24a). Whether the duty was or was not covered by the initial federal order is something the federal courts must resolve, not the state courts.

The Second Circuit's newly-announced limitation on the application of the Supremacy Clause has no basis in the text of the Bankruptcy Clause, the Judicial Code or the Bankruptcy Code, and the Second Circuit cited not a single case in support of the extraordinary notion that the state courts shall determine the scope of a federal confirmation order. Here, the Manville confirmation order bars "any Person" from commencing "any and all claims" "based upon, arising out of or relating to" the insurance policies that Travelers issued to Manville. (App. 274a–275a, 439a). The Second Circuit agreed that the direct action claims against Travelers fall within the plain scope of that prohibition, yet it refused to enforce the injunction by its terms because (in the Second Circuit's view) enforcement "risks . . . displacing state courts for large categories of disputes in which someone may be bankrupt." (App. 33a).

The Second Circuit's analysis is misplaced. Under the Supremacy Clause, power lawfully granted by Congress to bankruptcy courts pursuant to Congress's constitutional authority to enact "uniform laws on the subject of Bankruptcies" cannot be overridden by state law. This Court enforced this principle in *Perez* v. *Campbell*, 402 U.S. 637, 649 (1971). The petitioners (Mr. and Mrs. Perez) were Arizona residents involved in a vehicle collision with a third party, who sued the Perezes and secured a money judgment against them. Prior to the judgment issuing, however, the Perezes filed for bankruptcy protection. The bankruptcy court ultimately discharged the Perezes from all pre-bankruptcy debts and claims, including the adverse state court judgment. During the pendency of the

bankruptcy proceedings, the Arizona state legislature enacted a statute providing that judgment debtors in lawsuits stemming from automobile accidents may be stripped of their driving privileges if they fail to pay the money owed pursuant to those judgments within a specified period. The statute specifically stated that a "discharge in bankruptcy" would not relieve a debtor of his obligation to satisfy a judgment or prevent his license from being revoked. *Id.* at 642. This Court held that the Arizona statute was unconstitutional because it was "inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law" necessarily runs afoul of the Supremacy Clause. *Id.* at 652.

Perez continued this Court's rulings that private rights arising under state law must yield to federal bankruptcy courts' orders with which they conflict. In *Local Loan Co.* v. *Hunt*, 292 U.S. 234 (1934), respondent Hunt borrowed money from the petitioner and assigned a portion of his future wages as security. Hunt later filed for bankruptcy and received a full discharge. Hunt's creditor nonetheless sued in Illinois state court, arguing that Hunt's post-bankruptcy wages were not part of Hunt's estate in bankruptcy, and that the creditor's state-court attempts to collect on its state law-recognized property interest in Hunt's post-bankruptcy wages were proper because the wages "were not even part of Hunt's estate in bankruptcy." *Id*. at 236–37. This Court upheld the lower court's decision to enjoin the creditor's state-court suit against Hunt, concluding that state laws that frustrate "the general purpose and policy" of federal bankruptcy law "cannot be accepted as controlling

the action of a federal court." *Id*. at 244–45. *See also Hanover National Bank* v. *Moyses*, 186 U.S. 181, 192 (1902) (holding that a right to enforce judgment on a note, as permitted by state law, is subject to discharge in bankruptcy).

Perez, *Local Loan* and *Hanover National Bank* foreclose the reasoning and result of the court below. The force and effect of a federal confirmation order is not dependent on whether an asserted state law-created right exists. In all three cases, the assumed validity of the state law claim was irrelevant to the federal question regarding the scope of the federal bankruptcy court's injunction order. Inasmuch as the Manville confirmation order bars any claims against Travelers that "arise out of" or "relate to" the insurance policies Travelers issued to Manville, the court of appeals erred in concluding that Travelers may nonetheless be held liable for such claims if "the laws of the states where the claims [against Travelers] arose" purport to authorize liability against Travelers based on its insurance relationship with Manville. Such a result surely would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Perez*, 402 U.S. at 649 (quotation omitted), and must yield to the Manville confirmation order.

Virtually all claims dealt with in a confirmation order are created by non-bankruptcy law (*e.g.*, federal statutory or common law, state statutory or common law). To allow alleged state law-created rights to override express provisions of a federal confirmation order undermines the ability of bankruptcy courts to release asbestos-related liabilities in a confirmation order. The court's

decision below that "there is not one but many courthouses where the legitimacy of these actions must be tested" (App. 36a) misses the point entirely. States can create and define the elements of private rights. But under the Supremacy Clause, when alleged state law-created causes of action are dealt with in a federal confirmation order (here, such causes of action were settled, released and channeled to a trust within federal bankruptcy court jurisdiction), they can no longer be pursued. The opposite conclusion would result in precisely the type of state-dependent variation and uncertainty that the Supremacy Clause is designed to prevent.

III. THE SECOND CIRCUIT'S DECISION UNDERMINES IMPORTANT PRINCIPLES OF JUDICIAL FINALITY AND REPOSE

Upon affirmance by an appellate court, the finality and repose afforded by a federal court judgment "acquires an added moral dimension." *Calderon* v. *Thompson*, 523 U.S. 538, 556 (1998). In the intervening two decades since the bankruptcy court entered the confirmation order in this case, that order has governed the rights and obligations of hundreds of thousands of Manville asbestos claimants and other interested parties. The confirmation order allowed these hundreds of thousands of asbestos claimants to pursue their rights and obtain compensation without the traditional cost and delay associated with the judicial system. No court—prior to the panel that rendered the decision below—had ever questioned the validity of the long-final confirmation order in this case.

A. Final Confirmation Orders Are Not Subject to Collateral Attack

The court of appeals' decision to revisit the propriety and scope of the confirmation order nearly a quarter century after the fact "dishonor[s] the historic wisdom in the value of repose." *City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197, 219 (2005) (quotation omitted). By rewriting the Manville confirmation order retroactively to give enterprising plaintiffs' lawyers an "end run" around its core provision, the decision below signals "a willingness to reconsider other [orders]. And that willingness could itself threaten to substitute disruption, confusion, and uncertainty for necessary legal stability." *John R. Sand & Gravel Co.* v. *United States*, 128 S. Ct. 750, 757 (2008).

Disruption, confusion, and uncertainty are especially damaging in the bankruptcy context. "Bankruptcy is an intensely practical affair," *In re Cooper Commons LLC*, 512 F.3d 533, 534 (9th Cir. 2008), requiring stable, clear and uniform rules upon which parties can rely when making business and legal decisions. Once a confirmation order is entered and affirmed in full (as the Manville confirmation order was affirmed by the Second Circuit in 1988), parties must be able to rely on the enforcement of that order. *See In re Chateaugay Corp.*, 988 F.2d 322, 325 (2d Cir. 1993) (recognizing that "the ability to achieve finality is essential to the fashioning of effective remedies," particularly "in bankruptcy proceedings").

The paramount importance of finality of bankruptcy court confirmation orders is illustrated

by *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371 (1940). In May 1934, Congress amended the Bankruptcy Code to prescribe the mode and conditions under which a municipality or other political subdivision of a state could effect a debt readjustment. *See* Municipal Bankruptcy Act, Pub. L. No. 73-251, 48 Stat. 798 (May 24, 1934). The Chicot County Drainage District, a political subdivision of the State of Arkansas, sought readjustment of its indebtedness under these new provisions, and a final decree was entered effecting the readjustment in 1936.

After the decree was final and no longer subject to appeal, this Court held that the law under which the debt readjustment had been ordered was unconstitutional as it improperly interfered with state sovereignty. *See Ashton* v. *Cameron County Water Improvement District*, 298 U.S. 513 (1936). Following *Ashton*, a bondholder of Chicot County Drainage District attempted to attack the original readjustment decree collaterally, arguing that *Ashton* rendered it void.

While the district court and appellate court were willing to set aside the final decree, this Court reversed, holding that the lower courts' prior determinations had been "deemed to have finality and [were] acted upon accordingly" by the parties involved. *Chicot County*, 308 U.S. at 374. The Court reasoned that because the lower courts had full authority "to determine whether or not they have jurisdiction" and to "construe and apply the statute under which they are asked to act," *id*. at 376, their earlier (and now final) conclusion that the act was constitutional and the relief was proper, "while open

to direct review, may not be assailed collaterally." *Id*. *See also Kontrick* v. *Ryan*, 540 U.S. 443, 455 n.9 (2004) ("Even subject-matter jurisdiction . . . may not be attacked collaterally."); *Stoll* v. *Gottlieb*, 305 U.S. 165 (1938).

The Second Circuit's decision to rewrite the Manville confirmation order cannot be squared with this Court's holding in *Chicot County*. Even if there were some infirmity in the bankruptcy court's 1986 order (and there most certainly was not, as an earlier Second Circuit panel concluded in 1988 on direct review), any such challenge was solely "open to direct review," not collateral attack. *Chicot County*, 308 U.S. at 376. *Cf. CBOCS West, Inc.* v. *Humphries*, 128 S. Ct. 1951, 1961 (2008) (legal stability requires respect for settled decisions regardless of "whether judicial methods of interpretation change or stay the same").

It is particularly telling that the primary authorities relied on by the Second Circuit to find fault with the Manville confirmation order—*In re Zale Corp.*, 62 F.3d 746 (5th Cir. 1995), and *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136 (2d Cir. 2005)—were decided on ***direct appeal*** of the orders in question.[10] If the original panel opinion in

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[10] *Metromedia*, in fact, ultimately affirmed the (non-asbestos-related) non-debtor injunction entered in that case, even though the court concluded on direct review that the non-debtor release was insufficiently supported by the record. 416 F.3d at 138. While "[i]nsufficient findings would ordinarily be remedied by remand to the bankruptcy court," *id*. at 143, the *Metromedia* court reasoned that because the plan had been substantially consummated in the absence of a stay pending appellate review, "[v]acatur and remand would . . . unsettle . . . a critical component of the Plan . . . and that none of the

MacArthur (affirming the Manville confirmation order on direct appeal in 1988) had reached the same conclusion as the panel opinion below, Travelers would never have contributed to the Manville trust, *MacArthur*, 837 F.2d at 90 ("The insurers are entitled to terminate the settlements if the injunctive orders are not issued or if they are set aside on appeal."), and Manville could not have reorganized into the successful enterprise it is today.

B. Public Policy Favors Finality

More than twenty years ago, Judge Lifland recognized correctly that finality was critical. It was critical to Johns-Manville to enable it to emerge from bankruptcy, to insurers such as Travelers that contributed to the asbestos personal injury trust, and to the asbestos claimants who benefited from those contributions. It is the finality offered by orders modeled on this case and those entered pursuant to Section 524(g) that has allowed some seventy companies with asbestos liabilities to reorganize successfully and provide funds to compensate those injured by asbestos. The promise of finality induced insurers to fund asbestos trusts for the benefit of asbestos claimants. Indeed, as Judge Lifland explained:

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completed transactions can be undone without violence to the overall arrangements." *Id*. at 145. This respect for settled expectations and reasonable reliance on even a non-final order stands in stark contrast to the Second Circuit's decision on review here, which brushed aside the long-final Manville confirmation order as though the court were deciding a direct appeal.

> The Court's repeated use of the terms "arising out of" and "related to" [in the court's 1986 orders was] not gratuitous or superfluous; [these terms] were meant to provide the broadest protection possible ***to facilitate global finality*** for Travelers ***as a necessary condition*** for it to make a significant contribution to the Manville estate. [App. 172a (emphasis added).]

Limiting the scope and finality of the Manville confirmation order threatens drastically to reduce, if not eliminate, the incentive for insurers to contribute the monies necessary to make 524(g) trusts the vehicle for distribution of assets to asbestos victims—a fact that practitioners and commentators have emphasized in criticizing the Second Circuit's decision. *See, e.g.*, Dan Schechter, *Despite § 524(g), Global Settlement in Asbestosis Case Cannot Deprive Third-Party Plaintiffs of Direct Actions Against Nondebtor Insurer*, 2008 COMMERCIAL FINANCE NEWSLETTER 18 (Feb. 25, 2008) ("If this opinion stands . . . , quite a few supposedly 'global' asbestos settlements will be imperiled. Some insurers will decline to participate in Manville settlements.").

In the two decades since the bankruptcy court entered the confirmation order in this case, that order has governed the rights and obligations of hundreds of thousands of Manville asbestos claimants and other interested parties. It allowed hundreds of thousands of asbestos claimants to pursue their rights and obtain compensation without the traditional cost and delay associated with the judicial system. Likewise, literally ***tens of billions of dollars*** have been committed to asbestos trusts in

cases throughout the country based on the premise that the channeling mechanism originally used by Judge Lifland in the Manville bankruptcy would provide all parties with finality, and that, once entered and affirmed, the finality of those orders would be respected. The court of appeals erred in disregarding its original affirmance of the Manville confirmation order in 1988 and the widespread societal reliance on the finality of that affirmance.

Adherence to settled decisions "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Vasquez* v. *Hillery*, 474 U.S. 254, 265–66 (1986). The decision below disregarded this fundamental principle.

C. The Bankruptcy Reform Act of 1994 Prohibits Collateral Attacks on the Manville Confirmation Order

The Second Circuit's 1988 affirmance of the Manville confirmation order in *MacArthur* was based upon a construction of the Bankruptcy Code and the Judicial Code. *See MacArthur*, 837 F.2d at 91–93 (construing, *inter alia*, 11 U.S.C. §§ 105, 362, 363 & 541 and 28 U.S.C. §§ 157 & 1334). Adherence to precedent has "added force" when a prior decision interprets a statute, because "unlike in the context of constitutional interpretation, . . . Congress remains free to alter what we have done." *Hilton* v. *South Carolina Public Railways Commission*, 502 U.S. 197, 202 (1991).

The need to adhere to precedent is even ***greater*** here. Congress has not altered the result in *MacArthur* and its construction of bankruptcy jurisdiction. In fact, Congress has expressly ratified and approved Judge Lifland's confirmation order. The Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, 108 Stat. 4106 (Oct. 22, 1994), which added Section 524(h) to the Code, specifically ratified the Manville confirmation order, which Congress concluded had "met and surpassed the standards imposed in this section." H.R. REP. NO. 103-835, at 41 (1994). Moreover, going forward, Congress provided in Section 524(g) that when a bankruptcy court enters a confirmation order containing an asbestos-related channeling injunction issued or affirmed by a district court, "then after the time for appeal of the order that issues or affirms the plan . . . the injunction shall be valid and enforceable ***and may not be revoked or modified by any court*** except through [direct] appeal . . . ." 11 U.S.C. § 524(g)(3)(A)(i) (App. 474a) (emphasis added). Respect for "longstanding observances and settled expectations," *City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197, 218 (2005), are at their zenith here, where the Congress of the United States expressly "grandfathered" its effectiveness and adopted the Manville confirmation order as a blueprint for future proceedings.

The inequity of altering bankruptcy court protections—*ex post* and without compensation—is the very reason why settled authority prohibits collateral attacks on Chapter 11 reorganizations. Redefining the scope of a long-final confirmation order "unravel[s] intricate transactions so as to knock the props out from under the authorization for

every transaction that has taken place," and thereby creates "an unmanageable, uncontrollable situation" for courts and litigants alike. *In re Chateaugay Corp.*, 10 F.3d 944, 953 (2d Cir. 1993) (quotation omitted).

CONCLUSION

For the reasons set out above, Petitioners respectfully submit that the Second Circuit's opinion must be reversed and the case remanded for further proceedings.

Respectfully submitted,

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